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Moshe Rock

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EXAMINER

HOEY, ALISSA L

ART UNIT

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3765

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DELIVERY MODE

06/05/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/663,091	Applicant(s) ROCK, MOSHE	
	Examiner Alissa L. Hoey	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29,31-37 and 39-50 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21,22,44,45 and 47-50 is/are allowed.
- 6) ☒ Claim(s) 1-20,23-29,31-37 and 39-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/05/07, 03/23/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This is in response to amendment received on 02/21/07. Claims 1-29, 31-27, 39-45 and 47-50 are examined below.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 5, 6, 8, 10-12, 29, 31, 33, 34 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuznetz (U.S. 4569874) in view of King et al. (US 6,018,819).
3. Kuznetz discloses a composite sportswear fabric for cold climates comprising six layers including a primary garment, including thermal layer 20, inner skin 18, and inner skim 17 and an outer shell garment, worn over said primary garment comprising outer skin 19, outer skim 21, and shell 22 (Figures 2 and 3). Said sportswear fabric may be used to fabricate ski jackets, windbreakers, coats and other articles of apparel (column 3, lines 49-53).
4. Regarding claims 1, 29 and 41, inner skim 17, attached to thermal layer 20, is formed of synthetic fibers which have been texturized (column 3, lines 54-57), thus

providing said layer at least one raised surface. Regarding both claims 1 and 29, outer shell garment includes a first portion, the lower region of the sportswear jacket garment featured in Figure 1 and the underarm of the sleeves, and comprises a shell fabric 22. The body of said first portion defines an upper portion and a lower portion, the upper portion being the upper half of the aforementioned first portion, and the second portion being the lower half the aforementioned first portion. Outer shell garment also has a second portion, the upper region of the sportswear jacket garment featured in Figure 1, which includes the shoulder surface and the top surface of the sleeve portions. Kuznetz discloses Gore-tex® to be a suitable fabric for outer shell 22 (column 4, lines 28-29), and thus a suitable fabric for said first and second portions.

The following information regarding Gore-tex® fabric construction has been obtained from the following web addresses:

http://www.gore-tex.com/remote/Satellite?c=fabrics_cont_land_c&childpagename=goretex_en_US%2Ffabrics_cont_land_c%2FTechnologyOfComfortFrameset&cid=1147200060485&p=1147200061347&pagename=SessionWrapper
http://www.gore-tex.com/remote/Satellite?c=fabrics_cont_land_c&childpagename=goretex_en_US%2Ffabrics_cont_land_c%2FTechnologyOfComfortFrameset&cid=1147200060485&p=1147200061347&pagename=SessionWrapper

<http://www.fabriclink.com/pk/Gore-tex/Home.html>

5. In regard to claims 1,29 and 41, Applicant claims the outer shell garment wherein the first portion is breathable, water repellent and wind resistant, and the second portion is vapor permeable, and substantially waterproof and windproof. Gore-tex® fabric is breathable, waterproof, and windproof. Waterproof fabrics – that is, fabrics whose pores have been closed so that water is unable to pass through – are necessarily water repellent, as water repellent fabrics are fabrics that shed or repel water. Similarly, windproof fabrics – fabrics having an air permeability of 1 cfm or less in a 30 mph wind – are necessarily wind resistant fabrics, fabrics that prevent a substantial amount (approximately 95%) of wind from passing through. Thus, Kuznetz discloses a first portion that is water repellent and wind resistant. Additionally, Kuznetz discloses the outer fabric shell 22 is permeable to water vapor (column 4, lines 25-28), as are all breathable fabrics, by definition. Still, Gore-tex® fabrics are tightly-woven, employing a dense weave in order to enhance water repellency.

However, Kuznetz fails to teach the first portion and the second portion of the jacket having different vapor and air flow permeabilities.

King teaches a first portion (front portion of the jacket) and the second portion (back portion of the jacket). The first portion of the jacket has an upper portion of the outer shell having greater transmission of water vapor and predetermined through-flow of air than compared to the second portion of the jacket. The second portion of the

jacket has a lower vapor transmission rate and a lower air through-flow, relative to the first portion (see abstract of King).

It would have been obvious to have provided the multi-layer jacket of Kuznetz with the first and second portions having different vapor and air flow through rates of King, since the jacket of Kuznetz having portions with different vapor and air flow through rates provides a jacket that is suitable for use during physical activity due to the ability of vapor to escape from inside the jacket creating a more comfort to the user.

6. Regarding claims 2 and 34, as visible in the sportswear jacket of Figure 1, the outer shell fabric 22 covers or forms the entire shell fabric.

7. Regarding claims 5 and 6, Gore-tex® fabric, disclosed as an ideal fabric for the material of the outer shell 22, is created when the Gore-tex® membrane is bonded to high-performance textiles to create laminated fabrics. The Gore-tex® membrane comprises expanded polytetrafluoroethylene, or ePTFE, and is vapor permeable, while remaining water impermeable. Thus, Kuznetz anticipates the shell fabric wherein the vapor permeable moisture barrier comprises a breathable membrane of PTFE.

8. Regarding claims 8 and 38, as explained in paragraph 5 above, Gore-tex® fabrics are tightly-woven to improve its water repellency.

9. Regarding claims 10 –12 and claims 30-31, as explained in paragraph 4 above, the first portion of the outer shell garment comprises the lower portion of the jacket and the second portion comprises the upper portion of the jacket, wherein the lower portion

of the jacket defines the underarm section of said jacket and the upper portion of the jacket defines the shoulder surface and top sleeve surface of said jacket.

10. Regarding claims 16 and 33, the outer shell 22, and thus the second portion as defined in the previous paragraph, comprises windproof fabric. Windproof fabric, as disclosed in paragraph 5 above, has an air permeability of 1 cfm or less in a 30 mph wind.

11. Regarding method claim 41, said method claim is anticipated by the structure cited in the preceding paragraphs, particularly paragraphs 3-5, as the garment of Kuznetz is intended to be worn, and its wearing is, therefore, inherent.

12. Claims 3, 4, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuznetz (U.S. 4569874) and King as described above and in further view of Shinkai et al. (U.S. 5308689).

Kuznetz and King disclose the invention substantially as claimed, and as discussed in paragraphs 3-11 above, including a vapor permeable, waterproof shell fabric. Kuznetz and King, however, fail to disclose said shell fabric wherein the vapor permeable moisture barrier comprises a coating formed on said fabric, specifically wherein the coating is a polymer selected from the group of acrylic, polyurethane, and silicon.

Shinkai et al. teaches a snag-resistant composite fabric for use in outdoor apparel where both a waterproof and vapor permeable garment is desired (column 2, lines 6-8), similar to present applicant's shell fabric. Shinkai teaches a waterproof,

water-vapor-permeable layer of synthetic polymer laminated to a protective layer of woven fabrics of yarns of synthetic polymer (column 2, lines 15-19) wherein the layer of synthetic polymer can be a waterproof water-vapor-permeable coating or film selected from many known in the art, including polyurethane (column 2, lines 46-51).

Thus, it would have been obvious to one of ordinary skill in the arts at the time of the invention to apply a waterproof, water-vapor-permeable polyurethane coating to an outerwear garment equivalent to present applicant's shell fabric, as taught by Shinkai, because polyurethane and other vapor permeable polymer coatings are commonly known and used in the apparel arts as they are able to effectively waterproof a garment while allowing the transmission of water vapor, from perspiration and the like, to enhance the comfort of the wearer.

13. Claims 19, 20, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuznetz (U.S. 4569874) and King and in further view of Gioello (U.S. 5515543).

Kuznetz and King discloses the garment substantially as claimed, and as discussed in paragraphs 3-11 above, including a textured thermal layer wherein said layer comprises a thin layer of non-woven hollow fibers which act to trap air and minimize convection heat losses (column 3, lines 65-67). Kuznetz and King fail to disclose said thermal layer defined by a channeled region, specifically a region of channels constructed of a raised surface wherein the channels extend vertically and horizontally.

Gioello teaches a multilayered ribbed ventilating garment comprising porous underlayer 12 (column 4, lines 17-18) and non-porous outerlayer 22, which may be either permanently or removably attached to underlayer 12 (column 5, lines 46-52). Attached to underlayer 12 is a first group of spaced ribs 14 to create channels 16 therebetween and a second group of spaced ribs 18 to create channels 20 therebetween. Said channels 16 and 20 extend in a cross-wise manner to one another creating cross-channels (column 4, lines 16-29). Gioello teaches the aforementioned channel structure allows for the airflow in the garment to be easily redirected so that the air flows evenly throughout the entire garment, maintaining a constant temperature throughout the garment and adding to the comfort of the wearer (column 6, lines 44-55). Thus, the outerwear of Gioello teaches a thermal, underlayer 12 defined by a vertically and horizontally extending channel region constructed to provide increased air circulation, the circulated air necessarily including that which has permeated through outerlayer 22. Additionally, as said underlayer 12 comprises the entirety of the inner garment, and the channel structure is attached to the entirety of the underlayer, Gioello teaches the thermal layer comprising a front portion having a raised surface, ribs 14, 18 extending from a shoulder region over a chest region to a waistline and a back portion, extending from the front portion, having a raised surface ribs 14, 18 defining channels 16, 20 and extending over the shoulder region, around a neckline and down each arm. Thus it would have been obvious to one of ordinary skill in the art to create the thermal layer of Kuznetz, which was intended to trap and spread heat throughout the garment, according to the teachings of Gioello, because the aforementioned channel structure

effectively accomplishes this purpose and channels, pleats, air pockets and other hollow constructions are known to trap and spread air evenly throughout a garment thus evenly distributing air, maintaining a constant temperature throughout the garment and enhancing the wearer's comfort.

14. Claims 17, 18, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuznetz (U.S. 4569874) and King and in further view of the present applicant's specification.

Regarding claims 17, 18, 26, and 27, Kuznetz discloses the invention substantially as claimed and discussed above, including a textured thermal layer wherein said layer comprises a thin layer of non-woven hollow fibers which act to trap air and minimize convection heat losses (column 3, lines 65-67). Kuznetz additionally discloses said thermal layer may be made from the fabric commercially available under the trademark "Thinsulate" (column 3, line 67 – column 4, line 2), as well as other well-known trademarks such as "Hollofil" and "Qualofil" (column 2, line 34). Kuznetz fails to disclose, however, the invention wherein the thermal layer comprises a fleece material, such as a double-face velour fabric, or a fabric with a high loft, such as a high loft sweater-knit with pile height in the range of about 8/32 inches to about 12/32 inches.

15. Present applicant discloses jacket liners having been developed for use with outer shell garments made, for example, of fleece material, said jacket liners intended to trap the wearer's body heat (page 1, lines 22-25). Additionally, applicant discloses that fleece materials are commonly used in garments, including jackets (page 4, lines 13-15)

and specifically notes that Polartec® Windpro® fabric available from Malden Mills Inc. is a double-face velour fabric commonly used as a jacket liner (page 4, lines 19-22).

Applicant also notes the high loft sweater-knit fabric, commercially available from Malden Mills Industries, Inc. under the trademark Polartec® Thermal Pro®, and having a pile height in the range of 8/32 inch to 12/32 inch, is an ideal insulating textile used in the industry (page 4, lines 24-27). Therefore, Examiner concludes that the use of fleece fabrics, specifically double-faced velour fabrics, as well as the use of high loft sweater-knit fabrics, including those having a pile height in the range of about 8/32 inch to about 12/32 inch, for jacket liners and similar insulating garments, was both common and well known in the apparel arts at the time the invention was made. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention, to substitute the insulating fabric of Kuznetz, specifically Thinsulate® or the like, for a fleece fabric, specifically a double-faced velour fabric, or a high loft sweater-knit fabric, specifically one having a pile height in the range of 8/32 to 12/32 inches, because both Thinsulate and the aforementioned fabrics perform the same insulating function, are constructed of similar materials, exhibit similar characteristics such as breathability, and are commonly used for performance wear. Additionally, it would be obvious to replace said Thinsulate material with the aforementioned fabrics because said fabrics are more cost effective.

16. Claims 1, 2, 5, 7, 9, 15, 25, 29, 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over King et al. (U.S. 6018819) in view of Kuznetz (U.S. 4569874). Regarding claims 1 and 29, King discloses a garment with moisture vapor transmissive

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wind barrier panels comprising outer shell 62, 62a present applicant's outer shell garment, and inner liner 64, 64a present applicant's primary garment, as well as a membrane 66, 66a located therebetween (column 4, lines 6-24), wherein membrane 66 differs from membrane 66a in order to impart differing performance characteristics on different areas of the garment. As membrane 66, 66a may be laminated to first fabric layer, outer shell 62, 62a it will be considered part of the outer shell fabric. Further, King teaches a first portion (front portion of the jacket) and the second portion (back portion of the jacket). The first portion of the jacket has an upper portion of the outer shell having greater transmission of water vapor and predetermined through-flow of air than compared to the second portion of the jacket. The second portion of the jacket has a lower vapor transmission rate and a lower air through-flow, relative to the first portion (see abstract of King).

17. King discloses the invention wherein inner liner 64 is made from a flocked material, said flocked materials necessarily being texturized to have at least one raised surface. As visible in Figures 4 and 5, King further discloses the invention wherein the garment is divided into upper front panels 122a, lower front panels 122b, upper rear panels 124a, and lower rear panel 124b (column 7, line 52 - column 8, line 16). It is noted that the lower front panels in Figure 4 have been mislabeled 124a, rather than 122b. Thus, King anticipates present applicant's outer shell garment, the body defining an upper portion (22a, 24a) and a lower portion (22b, 24b), as well as said garment defining a first portion, back panel 24a, 24b, and a second portion, front panel 22a, 22b.

18. Thus, outer shell 62a and membrane 66a comprise present applicant's first portion while outer shell 62 and membrane 66 comprise present applicant's second portion. King discloses rear panel portions 124a, 124b, present applicant's first portion, including outer shell 62a made from any suitable fabric material such as fleece or microfleece (column 8, lines 48-51). Membrane 66a may be laminated thereto, and comprises a hydrophobic microporous membrane (column 8, lines 60-63) such that the membrane, and thus the outer shell garment, is moisture vapor transmissive, water-resistant, and exhibits relatively high air permeability (column 9, lines 1-3). As outer shell 62a may be applied with a durable water repellency treatment (DWR) (column 8, lines 54-55), the rear outer garment is additionally water repellant and wind resistant while remaining breathable.

19. King discloses front panel portions 122a, 122b, present applicant's second portion, including outer shell 62 made from any suitable fabric material such as fleece or microfleece (column 8, lines 20-22). Membrane 66 may be laminated thereto, and comprises a hydrophobic microporous membrane (column 8, lines 26-29). Membrane 66 differs from membrane 66a of the rear panels, and is windproof, water-resistant and moisture vapor transmissive (column 8, lines 34-38). The membrane 66 is made from a expanded polytetrafluoroethylene, commonly known as, Gore-Tex, which is waterproof as described in the website provided above.

20. King, however, fails to specifically disclose the outer shell garment, wherein the second portion is waterproof rather than water-repellent. Kuznetz, as previously discussed, discloses a sportswear fabric for cold climates wherein the outer shell fabric

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is substantially windproof and waterproof, while remaining vapor permeable and, thus, breathable (column 4, lines 25-29). Additionally, it is just as easy and common to treat a garment with a waterproofing finish rather than a water-repelling finish, such as DWR. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention, to provide the garment with a waterproof outer shell 62 for front panel portions 122a, 122b instead of a water repellant outer shell 62, because waterproof fabrics are windproof and may still be vapor permeable, while being able to withstand extended exposure to water without becoming saturated, unlike water repellant fabrics.

21. Regarding claims 2, the outer shell garment is formed entirely of the shell fabric 62, 62a as visible in Figures 4 and 5. The shell fabric 62 for the front portion may be the same as the shell fabric 62a for the back portion (column, lines 51-54).

22. Regarding claim 5, membranes 66, 66a are vapor permeable moisture barriers laminated to shell fabric 62, 62a, as discussed in paragraph 16 above.

23. Regarding claims 7, 9, 15, 37 and 39, the second portion, outer shell 62 and membrane 66 of front panel portions 122a, 122b is different from the shell fabric of the first portion, outer shell 62a and membrane 66a. While membrane 66 of the second portion is constructed to be windproof, water-resistant and moisture vapor transmissive, having an air permeability of not more than 3 CFM/ft to qualify as windproof (column 8, lines 30-40), membrane 66a of the first portion is constructed to be moisture vapor transmissive, water-resistant and have relatively high air permeability, having an air permeability of at least 6 CFM/ft (column 9, lines 1-5). Thus, the second portion

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comprises a necessarily tightly woven fabric having air permeability relatively lower than that of the first portion, which preferably has an air permeability of 6CFM/ft or the like.

24. Regarding claims 25 and 40, King discloses the outer shell 62, 62a wherein it may be constructed from a microfleece material (column 8, lines 21 and 50).

25. Regarding method claim 41, said method claim is anticipated by the structure cited in the preceding paragraphs, so that the wearing of the outer garment over the inner garment is inherent.

26. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over King et al. (U.S. 6018819) in view of Kuznetz (U.S. 4569874) and in further view of Maeshima (U.S. 4470155). King, in view of Kuznetz, discloses the invention substantially as claimed, including a garment having a first fabric layer 62, 62a and a second fabric 64, 64a. King, however, discloses the fabric layers wherein they may be sewn to one another around the periphery of the garment, and fails to disclose the fabric layers wherein they are removably attached to one another at the neck, wrist, and waist. While King discloses a permanently attached garment, it is well known within the apparel arts to construct outerwear garments wherein the outer shell layer is detachable from the inner thermal liner, as disclosed in the present application (page 1, lines 18-25). Maeshima discloses a jumper 1 comprising an exterior or first side 14 and a liner 15 (column 2, lines 64-65). When a thicker garment is desired, liner 15 may be attached to first side 14 by snap fasteners. As visible in Figures 3 and 4, snap fasteners 19, having male snaps 191 and female snaps 192, attach the liner at the neck area of

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the garment (column 3 lines 35-43). Male 193 and female 194 fasteners at cuff 153 of sleeve lining 152, attach said sleeve lining 152 to sleeve 12 of the jumper at the wrist area and the first side 14 and liner 15 are attached at the waist section by the snaps labeled 191 in Figure 3 and 192 in Figure 4. Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention, in view of the teachings of Maeshima, to make the outer and inner fabric layers of King detachable from one another at the wrist, waist and neck, as is commonly done in outerwear garments because such a construction allows the garment to be customized to the wearer's needs and in accordance with the ambient temperature or weather conditions.

27. Claims 13, 14, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over King et al. (U.S. 6018819) in view of Kuznetz (U.S. 4569874) and Maeshima (U.S. 4470155) and in further view of Senser (U.S. 4554682). King, in view of Kuznetz, discloses the invention substantially as claimed, including an outerwear garment comprising outer shell 62, 62a and inner liner 64, 64a present applicant's primary garment and a method of wearing the disclosed garment. Maeshima additionally teaches the garment, wherein the outer layer is separable from the inner liner and attachable by mechanical fasteners. None of these prior arts disclose the garment wherein the detachable outer layer is stored in a compartment, specifically a pouch or pocket, of the inner layer.

28. Regarding claims 13 and 14, Senser teaches a convertible outerwear garment comprising a vest 12, jacket 14, and cape or poncho 16 (column 2, lines 45-48). The

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jacket is intended to be worn inside the vest, with the sleeves of the jacket protruding through the armholes of the vest, as visible in Figure 8. The cape is intended to be worn over one or more of the pieces, as visible in Figure 1. Thus, the vest/jacket combination is considered the inner garment, and the cape considered the outer garment.

29. Senser further teaches the vest garment 12 having a transverse opening 150 providing access to a pocket 152 wherein the poncho or cape is stored (column 4, lines 31-41). Thus, in further view of the teachings of Senser, it would have been obvious to one of ordinary skill in the art at the time of the invention, to attach a pocket to the inner garment of King for receiving of the outer garment, because, in addition to allowing the wearer to customize the garment in accordance with the weather and the wearer's level of activity, this construction provides a place to store the outer garment when it is not needed so that the wearer does not have to worry about forgetting the outer garment at home or carrying around said outer garment when it is not being worn.

30. Regarding method claims 41 and 42, Senser further teaches the poncho may be removed from pocket 152 and extended over the upper body of the user, when the wearer desires to use said poncho (column 4, lines 48-50). Method claims 41 and 42 are obvious in view of the structure of the garment, as taught by Senser, in combination with the way in which the garment is used because the pocket 152 is constructed to receive poncho 16 when it is not being worn and provides an easy and convenient place in which to store the removable outer garment, poncho 16.

Allowable Subject Matter

Claims 21, 22, 44, 45 and 47- 50 is allowed because the limitation requiring sleeve portions having a raised surface shorter in height and less dense than the front portion of the primary garment has not been anticipated or found obvious in view of any prior art.

Response to Arguments

Applicant's arguments filed 02/21/07 have been fully considered but they are not persuasive.

I) Applicant argues that Gioello (US 5,515,543) fails to teach the region of channel is constructed with a raised or pile surface of the thermal layer.

Examiner disagrees, because as claimed in claims 19, 20, 23 and 24 the channels of Gioello are formed with a raised surface, since the surface on the sides of the channel are lower than the raised surface of the ribs. There is no requirement that the channels cannot be attached to the fabric surface to form a single layer.

II) Applicant argues that the King (6,018,819) patent fails to teach a waterproof fabric and that water resistant is different than waterproof.

Examiner notes that water resistant fabric is waterproof based upon what elements the fabric is exposed to. The degree of water resistance is what is being argued, but there is no specific limitation in claims 1, 29 and 41 as to what degree the fabric is waterproof. All fabrics are only waterproof to a certain extent. The amount of pressure, the type of liquid applied and the amount of time exposed are all factors that determine to what extent a fabric is waterproof.

The fabric membrane film, laminated to the outer fabric on both the front and back layers of King is made from an expanded polytetrafluoroethylene, commonly known as, Gore-Tex fabric. Gore-Tex fabric is considered a waterproof fabric see website above for further support. Kuznetz is used in combination with King to show that Gore-Tex is waterproof.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-8610. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alissa L. Hoey/
Primary Examiner, Art Unit 3765